

QUESTIONS OF THE DAY

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COMMERCE ACT  
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QUESTIONS OF THE DAY.—XXXVIII.

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THE  
INTER-STATE COMMERCE ACT  
AN ANALYSIS OF ITS PROVISIONS

BY

JOHN R. DOS PASSOS

OF THE NEW YORK BAR

AUTHOR OF

"THE LAW OF STOCK BROKERS AND STOCK EXCHANGES," ETC.

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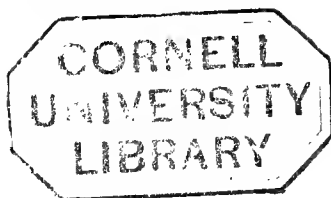
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1887



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## INTRODUCTION.

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PERHAPS no measure that ever passed Congress equals in importance the law which has now become famous under the name of the Inter-State Commerce Act. It is the first attempt on the part of the National Government to regulate, if not to control, a private commercial business ; for, although the transportation of passengers and property is regarded as one in which the public has an interest, it is, in its main features, not different from any other private commercial occupation. The capital invested in such enterprises is generally furnished by individuals, and the business, in its financial features, is conducted purely for private gain. For the past few years, however, public attention has been steadily concentrating around the subject of the government of railroad corporations, and, step by step, the Legislatures of the different States have encroached upon the prerogatives of these bodies, and

interested themselves by various means in their affairs.

Finally, by one bold and single leap, the Congress of the United States has, through the Inter-State Commerce Act, sought to absolutely direct all of the business of railroad transportation in the United States. This piece of legislation, although not new in thought, as we shall hereafter see, is entirely novel in the history of the United States Government; and when it passes through the ordeal of the courts, and its constitutionality is challenged, it will be found that outside of some disjected dicta of judges, there is no precedent for it in the decisions of the United States courts.

What its effect will be, assuming the perfect constitutionality of the Act, upon the prosperity or progress of the country, and upon the business and financial interests of the railroad corporations, no one can foretell; but that it will be a factor of the most vital importance, in the management of railroads, will be readily conceded. Whether the Act will be injurious to the financial condition of all the railroad corporations, or favorable to some and detrimental to others, it is impossible to predict.

But this is certain : So much power is lodged in the hands of the Inter-State Commerce Commissioners, that it lies mainly with those officials to determine whether the law will be salutary or hurtful, either to the railroads or the public ; because there can be no question that if the Act is broadly and wisely interpreted, and prudently administered, by the Inter-State Commerce Commissioners, all interests may be subserved, if not benefited.

This move of the National Legislature is one strongly towards the direction of centralization of power in the hands of the Federal Government. Strangely enough, its chief promoters and advocates are representatives from the South. The next natural step must be the purchase and absolute control, by the same power, of all this vast railroad property.

The subjects involved in the Inter-State Commerce Act are so interesting, and the people of the country are so deeply involved in its results, that no apology need be made for this little treatise, which embraces a history of the law, an analysis of its different provisions, as well as other matters generally connected with the subject.



## CHAPTER I.

### HISTORY OF INTER-STATE COMMERCE LEGISLATION.

**A**TTEMPTS to regulate the business of common carriers, and to prescribe rates of charges for transporting persons and property, and for storing or handling the latter, date back at least to 1870, when the people of Illinois incorporated in their constitution several sections relative to elevators or storehouses, where grain or other property was stored for a compensation ; and on April 25, 1871, to carry out the purposes of this constitutional provision, an act of the General Assembly of Illinois was passed, which was sustained as constitutional by the Supreme Court of the United States. (*Munn v. Illinois*, 94 United States, 113.)

In that case the Court held : " That where warehouses are situated and their business is carried on exclusively within a State, she may, as a matter of domestic concern, prescribe reg-

ulations for them, notwithstanding they are used as instruments by those engaged in inter-State, as well as in State, commerce ; and, until Congress acts in reference to their inter-State relations, such regulations can be enforced, even though they may indirectly operate upon commerce beyond her immediate jurisdiction."

At the same term of the Supreme Court of the United States (October, 1876), an act of the General Assembly of the State of Iowa, entitled " An act to establish reasonable maximum rates of charges for the transportation of freight and passengers on the different roads of this State," approved March 23, 1874, was also sustained as constitutional, and held not to be a regulation of inter-State commerce. (*Chicago, Burlington, & Quincy R. R. Co. v. Iowa*, 94 United States, 155.)

A similar statute of Wisconsin, prescribing a maximum of charges, to be made by the Chicago & Northwestern R. R. Co., for transporting persons or property within the State, or taken up outside of the State and brought within it, or taken up inside and carried without, was also upheld as constitutional. (*Peik v. Chicago & Northwestern R. R. Co.*, 94 United States, 164.)



The Supreme Court of the United States, in these cases, held that the various States of the Union had the power to pass laws limiting the amount of charges by railroad companies for fares and freights, and prescribing rules for the operation of the business of carriers, unless restrained by some contract in the charter of the corporation ; and it was further held that the States had such right, even though the income of the corporations may have been pledged as security for the payment of obligations incurred upon the faith of the charter.

In reply to the argument made, and forcibly pressed upon the Supreme Court, that these various statutes of the States of Illinois, Iowa, and Wisconsin violated that part of the Constitution of the United States which confers upon Congress power to *regulate commerce* among the several States, the Court in substance answered, that until Congress acts in reference to the relations of common carriers to inter-State commerce, it was within the power of the different States to regulate the fares, etc., of such common carriers, so far as they are of domestic concern, even though such legislation might indirectly affect persons or things without the State.

The above cases would seem to have settled the question in favor of the rights of the States to prescribe the charges, fares, etc., of common carriers, operating or conducting their business within the States, even if the consequences were to affect persons or things outside of the State.

But such was not the fact ; for in October, 1886, the Supreme Court of the United States re-examined the whole subject in a controversy arising between the Wabash, St. Louis, and Pacific Railway Company and the State of Illinois (118 U. S. Rep., 557). In that case it appeared that the Wabash Railway Company had violated a statute of Illinois, enacting that if any railroad company shall, within that State, charge or receive for transporting passengers or freight of the same class, the same or a greater sum for any distance than it does for a longer distance, it shall be liable to a penalty for *unjust discrimination*. The Wabash Railway Company made such discrimination in regard to goods transported over the same road or roads, from Peoria in Illinois, and from Gilman in Illinois, to New York, charging more for the same class of goods carried from Gilman than from Peoria, the former being eighty-

six miles nearer to New York than the latter, this difference being in the length of the line within the State of Illinois. The Supreme Court of the United States decided, through Mr. Justice Miller, that this statute of Illinois was unconstitutional, as infringing the clause of the Constitution of the United States, giving to Congress power to regulate commerce between the States. The Court said :

“It cannot be too strongly insisted upon, that the right of continuous transportation, from one end of the country to the other, is essential, in modern times, to that freedom of commerce from the restraints which the State might choose to impose upon it, that the commerce clause was intended to secure. This clause, giving to Congress the power to regulate commerce among the States and with foreign nations, as this Court has said before, was among the most important of the subjects which prompted the formation of the Constitution. (*Cook v. Pennsylvania*, 97 U. S., 556, 574 ; *Brown v. Maryland*, 12, Wheat., 419, 446.)

“And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the

States, which was deemed essential to a more perfect union by the framers of the Constitution, if, at every stage of the transportation of goods and chattels through the country, the State, within whose limits a part of this transportation must be done, could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce. . . . As restricted to a transportation which begins and ends within the limits of the State, it (the law of Illinois) may be very just and equitable, and it certainly is the province of the State Legislature to determine that question. But when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States, upon the transit of goods through those States, cannot be overestimated. *That this species of regulation is one which must be, if established at all, of a general and national character, and cannot be safely and wisely re-*

*mitted to local rules and local regulations, we think is clear, from what has already been said. And if it be a regulation of commerce, as we think we have demonstrated it is, and as the Illinois Court concedes it to be, it must be of that national character, and the regulation can only appropriately exist by general rules and principles, which demand that it should be done by the Congress of the United States under the commerce clause of the Constitution."*

This last decision of the Supreme Court of the United States furnishes the "motive and the cue" for the Inter-State Commerce Act, which was approved on the 4th day of February, 1887, and which was the result of a compromise agreed on by Conference Committees of the Senate and House of Representatives.

The power of Congress to pass a measure of this kind arises out of the third subdivision of Sec. 8, Art. I., of the Constitution of the United States, which provides that it shall have power "*to REGULATE commerce with foreign nations, and among the several States, and with the Indian tribes.*"

The Supreme Court of the United States, as we have shown by reference to the Wabash case, held, that the various States of the Union

had no right to regulate the traffic and business of railroads running through their respective boundaries into other jurisdictions, and that such power existed solely in the Congress of the United States.

But it must be remarked, that the language of Mr. Justice Miller, which is quoted above, so far as the Inter-State Commerce Act is concerned, the provisions of which were not before the Court, should be regarded as *obiter dictum*, and used only in a most general sense.

When the Act, therefore, creating the Inter-State Commerce Commission comes before the Supreme Court for interpretation, it will be treated and regarded as a new and original question, to be determined upon general principles, and without a precedent to guide the judges in their decision.

It is not necessary for the purposes of this work, indeed it would be fruitless to endeavor to attempt, to predict what the result may be when this Act comes before the Federal courts for interpretation. Our purpose will be subserved in laying before the readers, independently, and without bias, briefly and generally, the main and striking arguments which occur to us in our analysis of the different sections of this important law.

## CHAPTER II.

### TO WHAT COMMON CARRIERS THE INTER-STATE COMMERCE ACT APPLIES.

THE first section of the Inter-State Commerce Act, by the most general and comprehensive language, undertakes to include within its provisions two descriptions of carriers.

#### *Common Carriers Wholly by Railroad.*

First: The Act applies to any common carrier or carriers engaged in the transportation of passengers or property, *wholly by railroad*, from one State or territory of the United States, or the District of Columbia, to any other State or territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any

place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or in an adjacent foreign country. (Sec. 1.)

*Common Carriers Partly by Railroad and Partly by Water.*

Second : It also applies to any common carrier or carriers engaged in the transportation of passengers or property *partly by railroad and partly by water* when both are used, under (1) a *common control*, (2) *management*, (3) or *arrangement*, for a *continuous carriage or shipment* from one State or territory of the United States, or the District of Columbia, to any other State or territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or, from any place in the United States through a foreign country to any other place in the United States, and also to the transportation, in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-



shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or in an adjacent foreign country. (Sec. 1.)

*Term "Railroad" Defined.*

Third: The term "railroad," as used in this first section,\* is also defined to include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage. (Sec. 1.)

It will thus be seen, by a perusal of the first section of the law, that its language embraces all common carriers of passengers or property, doing business with more than one State, whether such carriers are natural persons, or corporations; whether they are aliens, or citizens, or foreign or domestic corporations.

Under the broad language of the first section, Express and Transportation companies are likewise included in the law, when their business runs into different States.

And Warehousemen and Storage-keepers are perhaps also embraced within the meaning of the law, where property is intrusted to their care, and they undertake to deliver it in another State, because the concluding language of the first section prescribes that all charges made "for the receiving, delivering, storage, or handling of such property" shall be reasonable and just.

*Internal State Commerce Not Affected.*

Fourth: It is expressly provided in the Act, that its provisions shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or territory as aforesaid. (Sec. 1.)

This exception was undoubtedly incorporated in the Act, in deference to the decisions of the Supreme Court of the United States, which hold that the power of Congress does not extend to regulating commerce completely internal. (*Gibbons v. Ogden*, 9 Wheat., 1.)

A common carrier, accordingly, may transact two classes of business, viz., one wholly within any State—in which case the business is un-

affected by the Act ; and the other between the different States, territories or foreign countries, where he is bound to comply with the terms of the Statute.

## CHAPTER III.

### RATES, CHARGES, AND FARES WHICH COMMON CARRIERS MAY COLLECT.

BY the last paragraph of Section 1. the compensation of common carriers is fixed, and it is there declared that "all charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be *reasonable and just*; and every unjust and unreasonable charge for such service is *prohibited and declared to be unlawful*." (Sec. 1.)

And the fourth section of the Act makes it unlawful for the carrier to charge or receive any greater compensation for a shorter than for a longer haul, irrespective of the question as to whether such compensation is "reasonable and just." It is an absolute prohibition. (Sec. 4.)

First: The first question which naturally

arises under this section is as to the power of Congress to fix the charges of common carriers.

Is this a "*regulation of commerce*" within the meaning of the Constitution?

Some light is thrown upon this matter by the opinion of the Supreme Court of the United States (*Munn v. Illinois*, 94 U. S., 113), where the general subject is fully examined, and where the court held, that, under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens towards each other, and, when necessary for the public good, the manner in which each shall use his own property. It has in the exercise of these powers been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, inn-keepers, etc., *and in so doing to fix a maximum of charge, to be made for services rendered, accommodations furnished, and articles sold.* When the owner of property devotes it to a use, in which the public has an interest, he, in effect, grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public for the common good as long as he maintains the use.

He may withdraw his grants by discontinuing the use. The Supreme Court, in the same case, held that common carriers exercise a sort of public office, and have duties to perform in which the public is interested. Their business is therefore affected with a public interest.

Mr. Chief-Justice Waite, who delivered the opinion of the court in that case, said : " In countries where the common law prevails, it has been customary from time immemorial for the Legislature to *declare what shall be a reasonable compensation under such circumstances, or, perhaps more properly speaking, to fix a maximum beyond which any charge made would be unreasonable.* Undoubtedly, in mere private contracts relating to matters in which the public has no interest, what is reasonable must be ascertained judicially, but this is because the Legislature has no control over such a contract. So, too, in matters which do affect the public interest, and as to which legislative control may be exercised, if there are no statutory regulations upon the subject, the courts must determine what is reasonable. The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of charge, as one of the means of regulation, is

implied. In fact, the common-law rule, which requires the charge to be reasonable, is itself a regulation as to price. Without it the owner could make his rates at will, and compel the public to yield to his terms or forego the use." (See also *Chicago, Burlington, and Quincy R. R. Co. v. Iowa*, 94 U. S., 155; *Peik v. Chicago, etc., Ry. Co.*, 94 U. S., 164.)

But the reasoning of these cases does not cover, it seems, the fourth section of the law which we are considering, because Congress does not attempt to fix therein any limit or price of compensation for the carrier; but arbitrarily declares that a common carrier shall not receive a greater or as great a compensation for a short as for a long haul, entirely irrespective of the merits of the service, and what it is reasonably and justly worth.

Second: The next point that will arise, assuming the power of Congress to fix the charges, is as to what constitutes a "reasonable and just" charge.

As the law stood before the Inter-State Commerce Act passed—at common law—if the parties to a contract did not stipulate the amount to be paid for any given service, the sum recovera-

ble, by the person furnishing the service, was a just and reasonable sum. In the absence of special contract, this rule applied to common carriers as well as other persons.

But as the law now is, under the Inter-State Commerce Act, the parties are no longer allowed to make absolute contracts, for the rendering of a service in the transportation of passengers or property, or in the receiving, delivering, storage, or handling of the same. The common carrier and shipper are no longer permitted to deal with each other as they please, because, so far as the amount to be received for the services is concerned, if they contract for a sum not "reasonable and just," such contract is void, because it is prohibited. Formerly the shipper could say to the common carrier: "If you will transport certain goods from Chicago to New York, I will pay you one dollar per hundred weight"; and such a contract was good, and could be enforced by the common carrier, regardless of the fact that such charge was excessive or unreasonable, because, in the absence of fraud, the law would not interfere with the private bargains of suitors. It allows its subjects to make their own bargains.

But now it is otherwise; no contract can be



enforced between the shipper and the carrier, where the amount claimed for the service is not just and reasonable.

The question as to what is a "reasonable and just" charge is to be determined by the courts, as intimated by the Supreme Court of the United States in the cases to which we have heretofore alluded (*Munn v. Illinois*, 94 U. S., p. 113; *Chicago, Burlington, & Quincy R.R. Co. v. Iowa*, 94 U. S., 155; *Peik v. Chicago, etc., Ry. Co.*, 94 U. S., 164); and evidence would be admitted on the part of both the shipper and the common carrier to show what was a reasonable and just charge. What the nature of such evidence will be, depends upon each individual case.

The ultimate decision of the question would, in an ordinary action at common law, be left to a jury to determine; but under the 13th, 14th, and 15th sections of the Inter-State Commerce Act, this question, of what is a reasonable and just charge, may also be determined by the Inter-State Commerce Commission.

But as under the 9th section of the Act, any person claiming to be damaged by a common carrier may bring suit in his name, and on his own behalf, in any District or Circuit Court of

the United States of competent jurisdiction, it follows that the compensation of common carriers will hereafter be largely regulated *by the decision of a jury*; and that practically the rates, fares, and charges for the transportation of passengers and property will be placed by the Inter-State Commerce Act in the hands of that uncertain and capricious body.

The question, whether a charge for service made by a common carrier is reasonable and just, can arise in two ways :

I. If the sum claimed for the service by the carrier has not been paid, if it be not reasonable and just, it cannot be recovered from the shipper.

II. If such amount has been paid, the shipper may recover the excess back from the carrier, either in an action at law under the 8th and 9th sections of the Act, or by appeal to the Inter-State Commerce Commissioners under the 9th and 15th sections thereof. But the injured party cannot invoke or pursue both remedies. (Sec. 9.)

III. In addition to these civil remedies, the common carrier may be prosecuted, for taking unreasonable and unjust charges, by indictment as for a misdemeanor. (Sec. 10.)

## CHAPTER IV.

THE ACTS WHICH THE COMMON CARRIER IS PROHIBITED FROM DOING BY THE INTER-STATE COMMERCE ACT.

THE Inter-State Commerce Act enumerates a great many acts on the part of common carriers which are specifically prohibited. We shall proceed to enumerate them in their order, with such comments as each section suggests.

### *Unjust Discrimination.*

First : The second section declares that if any common carrier subject to the provisions of the Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a *greater or less compensation* for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act,

*than it charges, demands, collects, or receives from any other person or persons FOR DOING FOR HIM OR THEM A LIKE AND CONTEMPORANEOUS SERVICE IN the transportation of a like kind of traffic* UNDER SUBSTANTIALLY SIMILAR CIRCUMSTANCES *and* CONDITIONS, *such common carrier shall be deemed guilty of* UNJUST DISCRIMINATION, which is hereby prohibited and declared to be unlawful.

I. A literal reading of this section of the Act would seem to make it apply to services rendered by a carrier before the passage of the Act ; because the language is : “ That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation *for any service rendered,*” etc., it shall be guilty of unjust discrimination. But the obvious intent and spirit of the law were to make it apply to cases occurring after it went into effect.

II. The offence of “unjust discrimination” is made up of two distinct branches,—viz., *first*, the mere *charging or demanding* a greater or less compensation for any service rendered, or to be rendered, than that charged or demanded

from other persons for doing a like and contemporaneous service, constitutes the offence; *second*, the act of *collecting* or *receiving* the compensation is also a misdemeanor.

III. The question, as to what is the "charging," "demanding," "collecting," or "receiving" of a *greater* or *less* compensation than that charged, demanded, collected, or received from any other person or persons, for doing for him or them "*a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions*," is one for the courts or for the Inter-State Commerce Commission, as the case may be, to determine. We consider it more fully in connection with the "fourth" section of the Act.

The language is ambiguous and indecisive, and this section of the law was the subject of much criticism in Congress when the Bill was discussed. (See debates of Congress, January, 1887.)

But be that as it may, the evident object of the framers of the law was to seek to establish a uniform and unvarying rate of compensation for services of the same or a similar description rendered in the transportation of passengers or property.

IV. It will be observed, however, that the language of this second section does not apply to the *receiving, delivering, storage, or handling* of property.

V. The remedies of the party injured under the second section are the same as those furnished for a violation of the first section, and are to be found by reference to Sections 8, 9, and 10 of the law.

*Undue Preference ; Unreasonable Prejudice.*

Second: The third section provides that it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any *undue or unreasonable preference or advantage* to any *particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever*, or to *subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever*.

Every common carrier subject to the provisions of this Act shall, according to their respective powers, *afford all reasonable, proper,*

*and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.* (Sec. 3.)

The first paragraph of this section declares as unlawful six distinct acts, viz. :

1st. To make or give any undue or unreasonable *preference or advantage* to any *particular person, company, firm, or corporation*.

2nd. To make or give any such preference to any *particular locality*.

3d. To make or give any such preference to any *particular description of traffic* in any respect whatsoever.

4th. Or, to *SUBJECT any particular person, company, firm, or corporation, to any undue or unreasonable prejudice or disadvantage, in any respect whatsoever.*

5th. Or to *subject any particular locality to such prejudice ;*

6th. Or to *subject* any *particular description* of *traffic* to such prejudice or disadvantage.

This section involves two distinct issues of fact, viz. : first, as to what is the making or giving of an *undue or unreasonable preference or advantage* ; or, second, what is the *subjecting* of any person, etc., to any *undue or unreasonable prejudice or disadvantage* in any respect whatsoever.

These questions of fact must be determined by the United States courts, or the Inter-State Commerce Commission, as the case may be.

#### *Carriers Dealing with Each Other.*

The second paragraph of this third section enjoins upon each common carrier three distinct duties in its *dealings with other carriers*, viz. :

1st. To afford all *reasonable, proper, and equal facilities* for the *interchange of traffic* between their respective lines.

2d. Afford such facilities for the *receiving, forwarding, and delivering* of passengers and property, to and from their several lines, and those connecting therewith ; and

3d. Shall not *discriminate* in their *rates and charges* between such connecting lines.



The performance of these duties are all questions of fact, to be determined by the courts of the United States, or the Inter-State Commerce Commission, as in the cases arising under the preceding paragraph of the same section. They all involve important and delicate issues of fact.

*Abrogation of Franchises and Contracts.*

Of course, if this legislation is sustained, it results in practically abrogating a great many of the important privileges and franchises now enjoyed by different common carriers, either existing by virtue of grants to them from different States; or by virtue of private contracts entered into between such carriers and private persons, or by carriers with each other.

I. All grants of franchises by States to common carriers, subject to the provisions of this Act, authorizing them to levy or collect a certain rate for mileage upon passengers, or a certain rate upon freight, or grant of any other description of special right, prerogative or franchise, inconsistent with the Inter-State Commerce Act, are vitiated and rendered nugatory; because, under the second subdivision of Article VI. of the Constitution of the United States, the

laws of the United States shall be the supreme law of the land.

II. So all private contracts, between carriers and individuals, relating to the transportation of persons or property, which are inconsistent with the terms of this Act, are likewise vitiated and rendered nugatory.

III. And all traffic, freight, or other agreements between common carriers subject to this law, relating to the transportation of passengers or freight, are likewise vitiated.

IV. The question will accordingly occur in this connection, whether the Act in this respect is not contrary to the Fifth Amendment to the Constitution of the United States, which provides that no person shall be deprived of his property without due process of law, "nor shall private property be taken for public use without just compensation."

*Long- and Short-"Haul" Provision.*

Third: The fourth section of the Act deals with the "short-haul" subject, and provides that it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive *any greater compensation in the aggregate* for the transportation of passengers or of

like kind of property, *under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction*, the shorter being included within the longer distance ; but this shall not be construed as authorizing any common carrier within the terms of this Act *to charge and receive as great compensation for a shorter as for a longer distance* : provided, however, that upon application to the Commission appointed under the provisions of this Act, such common carrier may, *in special cases, after investigation by the Commission, be authorized to charge LESS for a longer than for shorter distances* for the transportation of passengers or property ; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of the Act. (Sec. 4.)

I. This section creates a very unusual precedent in American legislation, for the principle that underlies the making of all laws, especially of a penal character, viz., that they are fixed and immutable rules for the government of the subjects of a country, is here departed from, and the law is relaxed *at the will of the Commission* named in the Act.

Until the Commission acts, however, it is a misdemeanor for a common carrier to charge a greater compensation for a shorter than for a longer distance. (See Sec. 10.)

The Commission is clothed with the extraordinary power of rendering nugatory this penal act, by prescribing the extent to which a common carrier may be relieved from its operation. Whether the Congress of the United States has the right to delegate its powers under the Constitution, in the respect here adverted to—to suspend the operation of a law—is one of the questions which the courts must decide.

It is very evident that Congress was firmly convinced that, in many instances, the common carrier was, and would be, justified in charging a greater or as great a compensation for a shorter than for a longer haul, or the unusual power of rendering nugatory the effects and penalties of the Act would not have been conferred upon this quasi-judicial body—the Inter-State Commerce Commission.

II. The exact meaning and effect of this fourth section were conceded to be ambiguous and doubtful in the debates in Congress when this law was discussed. (See debates of Con-

gress, January, 1887.) It will, accordingly, not be regarded as remarkable, if the courts should find it impossible to interpret language which apparently presented no definite meaning to the minds of the legislators who framed and passed the Act.

III. "It shall be unlawful for any common carrier . . . to charge or receive any *greater* compensation in the *aggregate* for the transportation of passengers, or of like kind of property *under substantially similar circumstances and conditions for a shorter than for a longer distance* . . . but this shall not be construed as authorizing any common carrier . . . to charge and receive as *great* compensation for a *shorter* as for a *longer* distance . . ."

There are two distinct inhibitions in this section: first, the carrier is prohibited from charging a GREATER compensation for a shorter than for a longer haul; and, second, then the Act goes on to declare that it shall not be construed as authorizing the carrier to charge "AS GREAT compensation for a shorter as for a longer distance."

The Act says to the carrier: "You shall not charge a *greater* compensation for a shorter

than for a longer haul under substantially similar circumstances, etc.—nay, you shall not even charge *as great* a compensation for a shorter as for a longer distance—whether the same circumstances exist or not.”

The meaning is badly expressed, but it seems to us that this is the only interpretation that can be put upon this branch of the section.

IV. Considered together, the language of the entire section presents the same difficulty; and it may absolutely fail for indefiniteness or want of meaning. “It shall be unlawful . . . to charge . . . any greater compensation in the *aggregate* for . . . transportation . . . *under substantially similar circumstances and conditions for a shorter than for a longer distance.*”

This is a prohibition to the carrier that he shall not charge a greater compensation in the aggregate for a shorter haul made under *substantially similar circumstances and conditions*. Here is a qualification. Suppose the qualification does not exist? Suppose the “shorter haul” to be made under substantially *dis-similar* circumstances and conditions? Can the carrier charge or receive a greater compensation for the “shorter haul”? It would seem

not ; for the remaining language of the paragraph says most emphatically : " but this shall not be construed as authorizing any common carrier within the terms of this Act to *charge or receive as great* compensation for a *shorter as for a longer* distance." And this subsequent language seems to wipe out the preceding qualification altogether. If this view be correct, the remedy of the carrier is to apply to the Inter-State Commerce Commission for a suspension of the prohibition. But, as we have said, the language is faulty, ambiguous, and perhaps so confused as to be incapable of interpretation.

V. But assuming that the clause of this section (which contains the words, " but this shall not be construed as authorizing . . . any . . . carrier . . . to charge . . . as great compensation for a shorter as for a longer distance ") does not destroy the qualification, and this is the view adopted by all of the advocates of the Act, as is seen in the notes herewith,<sup>1</sup> the question occurs as to

<sup>1</sup> Remarks of Hon. Shelby M. Cullom in the Senate of the United States, on the tenth day of January, 1887.

Mr. Cullom addressed the Senate in favor of the conference report, confining his remarks principally to the fourth section as to the long and short haul. The bill, he said, had stood remarkably well the test of the general and particular scrutiny to which it had been

the meaning of the words “under *substantially similar circumstances and conditions*, . . . over the *same line*, in the *same* direction, the

subjected. Its general provisions had, for the most part, met with approval, while the feature most strongly objected to (the fourth section) was misunderstood if not misrepresented. He said: “The objection made to this section as it now stands, which, if it were well founded, I should regard as the most serious, is that it is indefinite and ambiguous, that it is open to more than one construction. Of course, we cannot undertake to say positively what construction will be put upon the language used by the courts if they shall be called upon to determine the meaning of the section. It seems to me, however, that but one construction can be reasonably and properly placed upon this section, especially when it is considered, as it must be, in connection with the other provisions of the bill, and that its meaning is perfectly clear. But in view of the erroneous construction that seems to have been put upon this section in some quarters, I deem it proper to state that there seems to be no difference of opinion as to its meaning among the conferrees on the part of the Senate. . . . I think the Senator from Connecticut (Mr. Platt) and the Senator from Tennessee (Mr. Harris) understand the section as I do, and I think I am justified in saying that we would not approve it if we supposed or believed it to mean what some complain that it does mean or may be made to mean. The short-haul section simply undertakes to lay down in specific terms a rule or principle which, as I have always contended, is already in effect contained in other provisions of the bill. The first requirement of the bill on the subject of rates is found in the first section, and is that all rates shall be ‘reasonable and just.’ This is in effect a declaration that, under similar circumstances and conditions, a greater sum shall not be charged for a shorter than a longer distance, because under such circumstances it would not be ‘reasonable and just’ to make such a charge. The next requirement of the bill that affects this question is found in the first part of the third section, which (quoting the first part of the third section) forbids giving an undue or unreasonable preference or



shorter being included within the longer distance."

This is language of the most general and

advantage to any particular locality. This is likewise a declaration that a greater sum shall not be charged for a shorter than for a longer haul under similar circumstances and conditions, because such a charge would be the making or giving of an 'undue or unreasonable preference or advantage' to one particular 'locality,' or would subject some other particular 'locality' to an 'undue or unreasonable prejudice or disadvantage.'" Mr. Cullom then recited section four, and said :

"As I understand it, this section, as it now stands, simply prohibits a railroad corporation from charging a greater aggregate sum—not a higher rate—for a shorter than for a longer distance over the same line, in the same direction, and under substantially similar circumstances and conditions, when the shorter is included within the longer distance. There is no other prohibition made in positive terms. The declaration, that 'this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance,' does not in terms prohibit the charging as much for a shorter as for a longer distance, but simply withholds the legislative sanction from the making of such a charge. This qualifying clause negatives the inference that might possibly be drawn from the language of the section without these words, namely, that an equal charge for a shorter distance is authorized by inference, because only a greater charge is prohibited. This qualification, therefore, leaves the question of whether an equal amount can be charged for the shorter distance to be determined by the provisions of the bill to which I have already referred, requiring all charges to be reasonable, and forbidding the giving of an unreasonable preference or advantage to any particular locality. . . . The requirement of the fourth section, then, is that as between shipments of the same kind, in the same direction, over the same line, and made under substantially similar circumstances and conditions, a greater sum shall not be charged for a shorter than for a longer haul when the shorter comprises part of the longer haul—

comprehensive character. It refers to *all* of the *circumstances* and *conditions* existing at the *time* of the transportation. It is useless to un-

not that a higher rate shall not be charged per mile, but that a greater aggregate sum shall not be charged. . . . The limitations placed upon the prohibition that is made are very significant, and they must not be overlooked. They require that in determining the sum that may be charged for a shorter as compared with a longer distance the requirement must be made :

“ I. Between shipments ‘ of like kind of property.’

“ II. ‘ Under substantially similar circumstances and conditions.’

“ III. ‘ Over the same lines.’

“ IV. In the same direction.

“ V. When the shorter is ‘ included within the longer distance.’

“ When the act is to be applied in any given case to measure the charge that may be made for any distance, as compared with the longer distance, all of these limitations must be taken into account, and they must all apply to the case—not three or four of them, but all of them. The first, fourth, and fifth of these limitations do not appear to call for any explanation, but the meaning of the second and third may need some explanation. As I understand them, the words ‘ circumstances and conditions’ mean the conditions that govern railway traffic and the circumstances under which it is transported. To my mind these words are full of meaning. They comprehend all the circumstances and conditions that may justify differences in rates, such as competition with other railroads and with water routes, the volume and character of business at different points, the difference in terminal expenses, and the cost of service in each case. If the words used were ‘ the same circumstances and conditions,’ ingenious railway gentlemen would be able to show that the circumstances and conditions were never exactly the same in any two cases. And they might also be able to show that they were not ‘ similar,’ if that was the word used. But the words ‘ substantially similar’ impart enough latitude to the comparison to enable the courts to exercise a sound discretion and common-sense in passing upon cases that may arise. So far as any one railroad company is concerned,

dertake to specify what these "circumstances and conditions" may be; because each case must be judged by its individual facts.

therefore, the sum which it may charge for a haul from one end of its railroad to the other end becomes the maximum amount it can charge for any shorter haul over that road in the same direction and under substantially similar circumstances and conditions when the shorter distance is included within the longer.

"But the question that seems to trouble those who object to the section as it stands is, whether the maximum thus fixed is the sum which a railroad company charges upon shipments originating at and destined to points upon its own road, or whether the maximum is the sum which it accepts as its share of a through rate upon shipments passing over its road which originate at or are destined to points upon another road. It seems clear to me that there can be but one answer to that question. In the first place, the measure of the charge that may be made for the shorter distance is the sum that is charged for a longer distance over the same line and under substantially similar circumstances and conditions. The rates fixed by a railroad company between points upon its own road are clearly rates upon one line, or, in the terms of the bill, 'the same line.' A railroad company can make and control the rates upon its own road, and the section says that in making such rates the short-haul principle shall be observed. A railroad company cannot control rates over the roads of another company. But when two or more companies unite in making joint rates over their respective roads, they become in the eye of this bill one line, and this section says that the short-haul principle must be observed in making rates over that line, the two or more roads composing it being, within the meaning of the section, the same line so far as such joint rates are concerned. The word railroad is used throughout the bill, and the word line is used only in this section. The courts will be bound to assume that the word line means something different from the word railroad, or it would not have been used in this one instance when the word railroad would naturally have been used if something different had not been intended. The word line means a railroad

It also exclusively refers to a transportation over the *same* line (does this mean the same *company*? Is the word "line" synonymous

or a combination of railroads. It means a route. Section 7 of the bill requires the carriage of freights to be 'treated as one continuous carriage from the place of shipment to the place of destination,' and this could not be done in the case of shipments over connecting roads, if the word used in this section was 'railroad,' instead of line. . . . The joint through rates which are made by two or more railroad companies, between points upon their respective roads, are made over an entirely different and distinct line from that over which any one of the companies individually makes rates. And they are also made under different 'circumstances and conditions' from those which govern and determine rates made over a single railroad. The two transactions are separate and distinct, neither being necessarily governed by the other. Furthermore, the making of joint through rates is specifically recognized by the bill in the section requiring publicity of rates, and nowhere in the bill can any thing be found in relation to the division of a joint rate by connecting roads. I am satisfied, therefore, that the only construction that is warranted by the language of the section is the one I have given it, and that, instead of requiring rates to be measured by the percentage of a through rate which a road accepts, or of requiring through rates over connecting roads to be an aggregation of the local rates over each road, as some have claimed, the section as it stands simply requires that each railroad company shall observe the short-haul principle as to its own rates, and that the same principle shall also be observed by a combination of railroads as to the joint through rates between points upon their respective roads agreed upon by such a combination."

Mr. Hoar asked Mr. Cullom whether the construction put upon the section by the Senate conferees (that it only prohibited the charging of a larger gross sum for the shorter than for the longer haul, and did not prohibit a larger proportionate charge) was the sense in which the House conferees construed it.

Mr. Cullom in substance replied that there was no question but that every member of the conference committees of both houses un-

with "company" ?), in the *same direction*, the shorter being included within the longer distance.

qualifiedly understood that the fourth section was not to be construed as a pro rate per ton per mile law, but as a prohibition to charge in the aggregate the same amount for the short as for the long distance, unless under certain circumstances. . . . One of the elements in the objection to the bill was the misinterpretation of this fourth section. There has seemed to be a determination to construe this section as a pro rate per mile section. He undertook to say that no member of the conference committees ever dreamed that the language of the fourth section could be so construed.

Mr. Hoar suggested the case of the export trade of Boston (amounting to \$125,000,000 a year), and on the materials of which the Massachusetts railroads were allowed a rebate of 5 per cent. on account of the ports of New York, Philadelphia, and Baltimore being 250 miles nearer to Chicago than the port of Boston ; and he intimated that, under the fourth section, the Massachusetts railroads would either have to cut down their local rates or Boston would lose its foreign trade.

Mr. Cullom thought that perhaps it was a little unfortunate that Boston was further from the centre of gravity than New York, but he did not think there was any thing in the bill which would prevent railroads carrying produce to Boston just as cheaply as the railroads carrying produce to New York from Chicago, Omaha, or San Francisco.

Mr. Hoar, suggesting that Mr. Cullom misapprehended his meaning, restated the proposition.

Mr. Cullom in substance replied that, so far as the fourth section was concerned, there was nothing in it which would prohibit railroad companies taking these products at exactly the same rate to Boston as to New York. It was pretty difficult, he said, to pass any act providing any regulation whatever which would not appear to interfere harshly with what somebody was doing. He had no disposition to interfere with the foreign commerce of the country. He would very much prefer to see the foreign commerce increase, if it could be done

VI. Finally, there is no doubt that "the Commission may from time to time prescribe the extent to which such designated common

consistently with the protection of the interests of the great mass of the people outside of the seaports. . . . They were met here with this condition of affairs,—unjust discrimination, extortion, secret rebates, and all manner of unjust practices, which had been going on for years by railroad corporations because there had been no regulation of them by the Government of the United States. Now they had before them a bill which undertakes, in a moderate degree, to apply to them some sort of regulation. The bill provided that there should be no secret rebate, no unjust discrimination, no extortion, and that there should be no greater charge for a short haul than for a longer haul (on the same line) under exactly similar circumstances and conditions. He did not believe that the bill would interfere with the foreign trade of Boston. He did not believe that the Senator's constituents would be interrupted in their foreign commerce in the slightest degree by this bill. But if Congress was going to regulate railroad corporations at all, and to stop the discriminations by which towns were built up and towns were destroyed, there must be something in the bill to do it, or else the bill might as well be laid on the table.

[From editorial in *New York Times*, January 15, 1887 :

#### THE LONG AND SHORT HAUL.

"The debate of the last two days in the Senate on the Inter-State Commerce bill has turned almost wholly upon the long- and short-haul provision of the fourth section. The explanations and arguments which have been made confirm us in our original opinion of the meaning and effect of this provision. Our confidence in the view first taken was somewhat unsettled by the protests of prominent railroad men who ought to be capable of understanding the exact meaning of the bill, and who have exceptional knowledge of the facts and requirements of the railroad business. But we are convinced that their protests have been based either upon a misconception or a wilful perversion of the long- and short-haul section. Their obstinacy in adhering to an untenable ground was well illustrated in

carrier may be relieved from the operation of this section of the Act."

VII. It will thus be seen that the preceding

the speech of the railroad Senator from California, Mr. Leland Stanford, on Monday. Almost immediately after Senator Cullom had made a clear exposition of the intent and meaning of the long- and short-haul provision, Mr. Stanford based his whole argument on an utter perversion of its fair construction.

"The essence of this section is contained in the following words: 'It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance.' As Senator Cullom said, the qualifying words and phrases are full of meaning, and they furnish all the elasticity to the provision that is necessary to enable railroads to conform to the requirements of successful management. It was at first assumed by some of the objectors that this would require the charges for long distances to be proportioned to those for shorter distances. But the expression 'in the aggregate' plainly shows that it applies only to the total charge for the entire transportation. The same meaning is involved in the prohibition of unjust discrimination against localities. No one has yet shown that the obvious injustice of charging more for transportation from a nearer point to the same destination than from a more remote point, where the circumstances and conditions of the traffic are substantially the same, is justified on any general principle. If it is justified in any case, it must be due to exceptional circumstances, and then the prohibition would not apply.

"It has been claimed that this provision would compel railroads either to reduce their local rates or to increase their through rates in many cases where it would be disastrous to their interests and those of the communities which they serve. But it has nothing to do with the relations of through and local charges in the proper sense of the terms. The circumstances and conditions of through and local traf-

sections which we have analyzed, viz., the first, second, third, and fourth, deal with the question of the compensation of the common carrier,

fic are substantially different. Under the bill a railroad engaged in inter-State commerce could not, in fixing its local rates, discriminate against localities by charging more for a shorter than for a longer distance for the same kind of freight transported under similar conditions; neither could it make a like discrimination in through rates, and it is hard to see why it should be permitted to do so. In almost any conceivable case it would be an unjust and unjustifiable discrimination between localities.

“It has been said that the bill would give an advantage to shorter lines over longer ones between the same points. But the prohibition applies only to charges over the same line, and would not prevent a long line from putting its rates as low as those of a rival short line. It has also been said that it would force a railroad company controlling its own charges on its own road to conform them to its share of the compensation for a long haul over a line composed of several roads. But aside from the dissimilar circumstances and conditions in such cases the prohibition would only apply to the one line over which the traffic was carried, of however many different railroads it might be composed.

“Again, it has been claimed that the act would prevent the reduction of rates to meet the competition of water routes which serve the same points as the railroads. But the existence of such routes and the necessity of low rates to compete with them and do any business to and from the points which they reach, would constitute such a difference of circumstances and conditions that within the requirements of business necessity the bill would undoubtedly allow the discrimination.

“Much stress has been laid upon the effect which would be produced upon the grain interests of the Northwest and the cotton, iron, and other interests of the South. It is said that in order to bring our great grain supplies to the seaboard and send the surplus to foreign markets through rates must be lower than the railroads can afford for intermediate traffic. But suppose the circumstances and conditions



and the circumstances and method of charging and receiving the same.

By the first section the common carrier is

are substantially similar—that is to say, a carload or a trainload of grain is destined for the port of New York, either for the local market or for shipment abroad, what reason is there why a line of railroads bringing it here should be allowed to charge less in the aggregate from Dakota than from Minnesota, from Minnesota than from Illinois, from Illinois than from Ohio? If it may charge as much for the shorter distance that is certainly as large a liberty as it can reasonably ask for. The restriction will have nothing to do with what may be charged for grain by the bushel or flour by the barrel between intermediate points.

“Low rates for cotton from the South to Northern distributing points are certainly an advantage, but it is no advantage to the South or the North that when it is to be transported under the same circumstances and conditions a discrimination should be exercised against certain shipping points and in favor of others at a longer distance from its destination. The charge for transporting by the bale between local points would be in no way affected. So, it is said, the development of the coal and iron interests of the South depends on low rates of transportation to or beyond the Ohio River. But the bill would certainly not interfere with such rates. They could be made as low as the railroads could afford or were willing to make them. Rates for iron or coal would not be affected by those for any other kind of property. Coal or iron sent by the trainload over through lines would not be affected by the rates of transportation of the same materials locally under different circumstances and conditions. The simple fact would be that the same line taking coal or iron by the car or by the train from one point could not charge more for the same service from another point at a greater distance from the common destination, or more from the same point to a nearer destination than to one more remote, the circumstances and conditions of the traffic being substantially similar.

“In short, we do not see how this prohibition as to the short and long haul, fairly construed and judiciously applied, can injure either

prohibited from charging any more than a *reasonable and just* amount for its services; by the second section the carrier is enjoined against *unjustly discriminating* against any of its patrons, by charging a greater or less compensation for similar services—in other words, its rates must be uniform, the same to all, without any discrimination; by the third section the carrier is prohibited from giving any *undue or unreasonable preference* to any individual, etc., or location, or particular description of traffic, or *subjecting* such individual, etc., locality, or particular description of traffic, to any *undue or unreasonable prejudice or disadvantage*; and by the fourth section the carrier is prevented from charging *a greater or as great a* compensation for a *shorter* than for a *longer* haul.

By the foregoing sections it will be perceived that Congress has not only *limited* or *fixed* the amount of compensation which a common car-

the interests of the railroads, or those of the producers and shippers, or those of the business centres and seaports of the country. The outcry raised against it seems to have been partly the result of ignorance or misunderstanding and partly the outcome of an objection of railroad managers to any regulation of the liberty which they have so often abused to the injury of the country and even to the properties which they control.”]

rier may hereafter receive, by making it "reasonable and just," and leaving that question to be determined by the courts in the ordinary process of investigation ; but it has laid down rules which compel the carrier to make its rates uniform and unvariable, preventing all discrimination and exception, save so far as the Inter-State Commerce Commission may prescribe.

*Pools and Division of Earnings Prohibited.*

Fourth : The fifth section of the Act deals with pools, and provides that it shall be unlawful for any common carrier subject to the provisions of this Act to *enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof*; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offence.

It is not within the scope of this treatise to discuss the very important and difficult questions of the policy or public benefit growing out of railroad freight pools. Those

subjects may give rise to very interesting philosophical discussions, but they are not now germane because the Legislature has passed upon them, and by the section now involved has most emphatically condemned all railroad "freight pools"; nay, more, it has prohibited the division of the aggregate or net proceeds of the earnings of different and competing railroads, or any portion thereof.

*Combinations not to Make Carriage of Freight Continuous, Prohibited.*

Fifth: The seventh section provides that it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any combination, contract, or agreement, expressed or implied, *to prevent*, by change of time-schedule, carriage in different cars, or by other means or devices, *the carriage of freights from being continuous from the place of shipment to the place of destination*; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, or stoppage, or interruption was made

in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

This section was evidently passed and should be read in connection with the first four sections of the law, and especially of the third section, and properly comes after the fourth section, which relates to the short haul.

*Exceptions from Operations of the Act.*

Sixth : By the twenty-second section of the Act it is provided : That nothing in this Act shall apply to :

1st. The carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments,

2d. Or for charitable purposes,

3d. Or to or from fairs and expositions for exhibition thereat,

4th. Or the issuance of mileage, excursion, or commutation passenger tickets ;

5th. Nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion,

6th. Or to prevent railroads from giving free carriage to their own officers and employees,

7th. Or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees ;

8th. And nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies. Provided that no pending litigation shall in any way be affected by this Act. (Sec. 22.)

## CHAPTER V.

DUTY OF COMMON CARRIERS TO PREPARE, PRINT,  
AND PUBLISH SCHEDULES OF RATES, FARES,  
AND CHARGES.

*Schedules of Freight Rates and Passenger Fares,  
How to be Kept.*

THE sixth section of the Act deals with the very important subject of schedules, which the common carriers, subject to its provisions, are enjoined to keep for the use of the public.

By this clause it will be seen that the common carriers are *charged* with the following duties.

*Preparing Schedules.*

I. Of printing and keeping for public inspection schedules.

II. These schedules must show the *rates* and *fares* and *charges* for transportation of passengers and property which such carrier

has *established*, and which are *in force at the time* upon its railroad, as defined by the first section of the Act.

III. These printed schedules shall plainly state :

1st. The *places* upon its railroad between *which* property and passengers *will be carried*.

2d. The *classification of freight* in force upon such railroad.

3d. Shall also state separately the *terminal charges*.

4th. Any *rules or regulations* which in *any wise change, affect, or determine any part of the aggregate* of such aforesaid rates, fares, and charges.

IV. The schedules to be plainly *printed in large type* of at least the size of ordinary *pica*.

V. *Copies* for the *use of the public* shall be *kept* in every *depôt or station* upon any such railroad, in such places and in such form that they can be conveniently inspected.

In addition to the above, common carriers *receiving freight in the United States to be carried through a foreign country to any place in the United States* shall also,

VI. *Print and keep for public inspection, at every depôt where such freight is received for*



*shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment.*

Freight shipped as above, the through rate on which shall not have been made public, shall be subject to customs duties, as if said freight were of foreign production. (Sec. 6.)

*Advances in Rates.*

The section then deals with advance in rates, etc., and provides :

I. That no advance in the rates, fares, and charges shall be made except *after ten days' public notice.* (Sec. 6.)

II. This public notice shall state as follows :

1st. The changes proposed to be made in the schedules then in force.

2d. The *time* when the increased rates, fares, or charges will go into effect.

III. These proposed changes shall be shown by printing new schedules, or shall be plainly indicated *upon the schedules in force at the time* and kept for *public inspection.*

*Reduction in Rates.*

Reduction in published rates, fares, or charges may be made *without previous public notice*, viz. :

I. Notice of the reduction shall *immediately* be *publicly posted*.

II. The *changes* made shall immediately be made public by printing *new* schedules ; or,

III. Shall immediately be plainly indicated upon the schedules at the time in force.

*Carrier not to Charge, Demand, Collect, or Receive Greater or Less Compensation than Published Rates.*

It shall be unlawful for the carrier to charge, demand, collect, or receive a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedules then in force.

*Filing Schedules, Contracts, etc., with Commission.*

The carrier must *file* with the Commission (within what time is not specified, but the in-

tention seems to be that it should be done immediately).

I. *Copies* (how many not stated) of *its schedules of rates, fares, and charges* established and published.

II. Shall *promptly notify* said Commission of all *changes made in the same*.

III. Every carrier shall also *file* with the Commission *copies of all contracts, agreements, or arrangements with other common carriers* in relation to any traffic affected by the provisions of the Act to which it may be a party.

IV. In cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates, or fares, or charges for such continuous lines or routes, *copies* of such *joint tariffs* shall also, in like manner, be *filed* with said Commission.

*Publishing Joint Rates, Fares, and Charges.*

Such joint rates, fares, and charges on such continuous lines so filed as aforesaid, shall be made *public* by the *carriers*—

I. *When directed by the Commission*, in so far as may, in the judgment of the Commission, be deemed practicable.

II. And the Commission shall from time to time *prescribe the measure of publicity* which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to *publish*, and the *places* in which they shall be published.

III. No common carrier, party to a joint tariff, shall *be liable for the failure* of any other carrier, party thereto, to observe and adhere to the rates, fares, or charges thus made and published. (Sec. 6.)

*Remedies against Carrier for Refusing or Neglecting to File and Publish Schedules or Tariffs.*

In addition to the penalties prescribed in the eighth, ninth, and tenth sections of this Act, if the carrier shall neglect or refuse to *file* or *publish* its schedules or tariffs of rates, fares, and charges, or any part of the same, such carrier shall be subject to a writ of MANDAMUS—

I. To be issued by any Circuit Court of the United States in the *judicial district wherein the principal office of said common car-*

*rier is situated, or wherever such offence may be committed.*

II. And if such common carrier be a *foreign corporation*, in the judicial circuit wherein *such common carrier accepts traffic, and has an agent to perform such service*, to compel compliance with the aforesaid provisions of this section.

III. Such writ shall issue *in the name of the people of the United States at the relation of the Commissioners appointed.*

IV. Failure to comply with its requirements shall be *punishable as and for a contempt.*

V. The Commissioners, as complainants, may also apply, in any *such Circuit Court of the United States*, for a WRIT OF INJUNCTION *against, and to restrain such carrier from receiving or transporting property, within the places mentioned in the first section of the Act, until such common carrier shall have complied with the aforesaid provisions of this section of the Act.* (Sec. 6.)

*Comments on Sixth Section.*

It will be observed by a careful reading of this important section of the Inter-State Commerce Act, that the most stringent provisions are made for the preparation, publication, and filing of schedules, showing the rates, fares, and

charges to be made by the carrier, for the transportation of passengers and property upon separate, or joint, or continuous roads. Not only that, but such carriers are compelled to file all joint-traffic agreements with the Inter-State Commerce Commission.

A failure to do all or either of these requirements subjects the offending carrier to an indictment for misdemeanor; the carrier may also be enforced to perform its duties by the writ of mandamus; and it may be restrained by injunction from transacting *all of its business in the transportation of property*, as mentioned in the first section of the Act, until it complies with the law.

It will also be observed that the jurisdiction of the Circuit Courts of the United States is enlarged for the purposes of the Act, and that a writ of mandamus may be issued against the carrier, not only in the judicial district "wherein the principal office of said common carrier is situated," but in the district *wherein such offence may be committed*.

If the common carrier be a foreign corporation, "in the judicial circuit wherein such common carrier accepts traffic, and has an agent to perform such service."

Reading this section in connection with the

other parts of the law, it is obvious that hereafter the entire business of a carrier is in the hands of the public. The charges of the common carrier are not only fixed in advance by placing it in the power of a jury to specify what they shall be—"reasonable and just,"—but the carrier is compelled to print and publish them, with every detail, to expose its joint agreements with other roads, and to refrain from increasing its rates, no matter what the special circumstances may be, until it has given, in due form, a previous notice of ten days.

No other business or occupation has ever been subjected to such an extraordinary control and espionage. But the whole issue is narrowed down to this proposition, viz. : Does this Act, in all of its parts, and considered as a whole, constitute *a regulation of commerce* by Congress? If so, it is a valid act.

But if it be shown that the effect of an act is not to *regulate* but to *destroy* commerce, not to *regulate* but to *interfere* with commerce, to hamper or retard its growth, have the courts of the United States the power to interfere? Have they the power to limit the legislative control of the subject?

## CHAPTER VI.

### PENALTIES AND REMEDIES FOR VIOLATING ACT.

THE general penalties of the Act are contained in the eighth, ninth, and tenth sections, but there are other special penalties provided for in the other sections, which we shall briefly allude to in this connection.

First: Section 8 provides that in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in this case.

Second: Sec. 9—That any person or persons



claiming to be damaged by any common carrier subject to the provisions of this Act *may either make complaint to the Commission* as hereinafter provided for, or may *bring suit in his or their own behalf* for the recovery of the damages for which such common carrier may be liable under the provisions of this Act in any District or Circuit Court of the United States of competent jurisdiction ; but such person or persons shall not have the right to pursue both of said remedies, and must in each case *elect which one of the two methods of procedure herein provided for he or they will adopt*. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit ; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Third : Sec. 10.—That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall wilfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any District Court of the United States within the jurisdiction of which such offence was committed, be subject to a fine not to exceed five thousand dollars for each offence.

To these penalties must be added some others, as follows :

Fourth : Each day's continuance of an agreement between carriers to *pool freight* shall be deemed a separate offence. (Sec. 5.)

Fifth : Where a common carrier, receiving freight in the United States to be carried through a foreign country, fails to print and keep for public inspection at the depôt where such freight is received for shipment, *schedules* showing the through rates, such freight shall, before it is admitted into the United States from such foreign country, be subject to *customs duties*. (Sec. 6.)

Sixth : *A failure to comply with the writ of mandamus* issued to compel the performance of duties devolved on carrier by the sixth section, shall be punishable as and for a contempt. (Sec. 6.)

Seventh : A failure to obey an order of the Circuit Court of the United States, requiring a carrier to appear before the Commission (and produce books if ordered) and give evidence, may be punished by the court as a contempt. (Sec. 12.)

Eighth : If it be made to appear to the Cir-

cuit Court, that the lawful order or requirement of the Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same ; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process incident to writs of injunction, against such common carrier, or persons failing to obey such writ or process ; and said court may make an order directing such common carrier, or other person, so disobeying such writ of injunction or other process, to pay a sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other process. Such money shall be payable as the court shall direct, either to the party complaining, or into court, or into the treasury ;

and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree *in personam* in such court. (Sec. 16.)

Ninth : Lastly, it is provided that nothing in this Act contained shall in any way abridge or alter the remedies *now existing at common law or by statute*, but the provisions of this Act are in *addition* to such remedies : provided that no pending litigation shall in any way be affected by this Act. (Sec. 22.)

*Comments upon above Sections.*

It will thus be seen that the Act prescribes a full measure of remedies and penalties for a violation of its provisions, or any part thereof.

We shall separate and briefly recapitulate them.

*Criminal Remedy.*

Under the tenth section of the Act an indictment lies in the following instances :

First : Against any *common carrier* subject to the provisions of this Act, who, *alone or with*

any other corporation, company, person, or party, shall wilfully do any matter or thing, etc., prohibited by the act, etc., etc., as enumerated in the said section.

Second : Whenever such common carrier is a corporation, against any *director* or *officer* thereof, or any *receiver, trustee, lessee, agent, or person acting for or employed by such corporation*, who, *alone* or with any other corporation, company, person, or party, shall wilfully do, any matter or thing prohibited by the said Act, etc., etc., as enumerated in said section.

This criminal remedy would be invoked in the District Court by indictment, precisely the same as it would be for the infraction of any other offence against the United States.

### *Civil Remedies for Party Injured.*

The Act provides two distinct forms of remedy for any party injured by the failure of a common carrier to comply with the terms of the Act.

First : The person or persons injured may bring suit in his or their own behalf for the recovery of damages in any *District* or *Circuit* Court of the United States of competent jurisdiction. (Secs. 8 and 9.)

Second : Or, such person or persons may make complaint to the Commission, following the forms and practice enumerated in Sec. 13, *et seq.* (Sec. 9.)

But such person shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided he or they will adopt. (Sec. 9.)

*Remedies of Complainants whether Damaged or not.*

There are three classes of complainants who may institute proceedings against common carriers *without alleging any injury or damage.*

*First.* Any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, *complaining of any thing done or omitted to be done* by any common carrier, subject to the provisions of this Act in contravention of the provisions thereof, may apply to said Commission by petition, etc. (Sec. 13.)

*Second.* Said Commission shall, in like manner, investigate any complaint *forwarded* by the *Railroad Commissioner*, or Railroad Commis-

sion of any State or territory, at the request of such Commissioner or Commission. (Sec. 13.)

*Third.* And said Commission may institute any inquiry *on its own motion in the same manner and to the same effect as though complaint had been made.* (Sec. 13.)

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. (Sec. 13.)



## CHAPTER VII.

### THE INTER-STATE COMMERCE COMMISSION.

WE now come to consider the most important portion of the Inter-State Commerce Act, which relates to the creation of the Commission, and its general functions and powers, as contained between the eleventh and the twenty-fourth sections of the Act inclusive.

#### *Title of Commission.*

The Commission is to be known as the "Inter-State Commerce Commission." (Sec. 11.)

#### *Number of Commissioners and Manner of Appointment.*

It shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. (Sec. 11.)

*Term of Office.*

The Commissioners first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, 1887, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy, shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. (Sec. 11.)

*Removal.*

Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. (Sec. 11.)

*Political Complexion and Qualification of Commissioners.*

Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said

Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission. (Sec. 11.)

*Powers of Commission.*

The Commission hereby created shall have authority :

First : To *enquire into the management of the business of all common carriers* subject to the provisions of this Act. (Sec. 12.)

Second : Shall keep itself informed as to the manner and method in which the same is conducted. (Sec. 12.)

Third : Shall have the *right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.* (Sec. 12.)

Fourth : And for the purposes of the Act the Commission shall have power to *require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents* relating to any matter under investigation. (Sec. 12.)

Fifth : And to that end, *may invoke the aid*

*of any court of the United States, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section. (Sec. 12.)*

And any of the Circuit Courts of the United States within the jurisdiction of which such enquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question ; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying ; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. (Sec. 12.)

Sixth : By the last paragraph of Section 19 it is provided :

“ It (the Commission) may, by one or more of the Commissioners, prosecute any enquiry necessary to its duties, in any part of the

United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this Act.

Seventh : By the 20th section of the Act the Commission is authorized :

(a) To require annual reports from all common carriers subject to the provisions of this Act.

(b) To fix the time and prescribe the manner in which such reports shall be made.

(c) To require from such carriers *specific answers to all questions* upon which the Commission *may need information*.

(d) Such annual reports shall show in detail :

(1) The amount of the capital stock issued.

(2) The amounts paid therefor.

(3) The manner of payment for the same.

(4) The dividends paid.

(5) The surplus fund, if any.

(6) The number of stockholders.

(7) The funded and floating debts, and the interest paid thereon.

(8) The cost and value of the carrier's property, franchises, and equipment.

(9) The number of employees and the salaries paid each class.

(10) The amounts expended for improvements each year, how expended, and the character of such improvements.

(11) The earnings and receipts from each branch of business and from all sources.

(12) The operating and other expenses.

(13) The balances of profit and loss.

(14) And a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet.

(15) Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require.

(e) The said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. (Sec. 20.)

*Rules of, and Practice before, Commission.*

First : That the Commission may *conduct its proceedings in such manner as will best conduce to the proper despatch of business, and to the ends of justice.* (Sec. 17.)

Second : A *majority* of the Commission shall constitute a *quorum* for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. (Sec. 17.)

Third : Said Commission may, from time to time, *make or amend* such *general rules or orders* as may be requisite for the *order and regulation* of proceedings before it, including *forms* of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. (Sec. 17.)

Fourth : Any party may appear before said Commission and be heard, in person or by attorney. (Sec. 17.)

Fifth : Every vote and *official act* of the Commission shall be entered *of record*, and its *proceedings* shall be public upon the *request* of *either party interested.* (Sec. 17.)

Sixth : Said Commission shall have an official seal, which shall be judicially noticed. (Sec. 17.)

Seventh: *Either of the members of the Commission may administer oaths and affirmations.* (Sec. 17.)

*Method of Procedure before Commission.*

The method of procedure before the Commission is laid down in the 13th and subsequent sections of the Act, with great detail, and we proceed to unfold each distinct step in the progress of an investigation before that body, from the presentation of the petition to the final judgment of the Circuit Court—where that becomes necessary.

*Who May Make Complaint.*

First: Any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of any thing done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof. (Sec. 13).

Second: Said Commission shall in like manner investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any State or territory, at the request of such Commissioner or Commission. (Sec. 13.)



Third : Said Commission may institute any enquiry on its own motion in the same manner and to the same effect as though complaint had been made. (Sec. 13.)

*Proceedings—How Begun.*

The application to the Commission is made by petition of the complainant. (Sec. 13.)

*Contents of Petition.*

The petition shall briefly state the facts, and be delivered to the Commission. (Sec. 13.)

*Answer of Carrier.*

A statement of the charges thus made shall be forwarded by the Commission to such carrier. There is no time designated in the Act within which this must be done, but the use of the word "whereupon" indicates that it shall be delivered to the common carrier immediately. (Sec. 13.)

After the petition shall have been forwarded by the Commission to the carrier, such carrier shall be called upon "*to satisfy the complaint or answer the same in writing within a reasonable time, to be specified by the Commission.*" (Sec. 13.)

*Reparation or Satisfaction by Carrier.*

If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of (Sec. 13.)

*Trial or Investigation by Commission.*

If such a carrier shall not satisfy the complaint within the time specified, *or there shall appear to be any reasonable ground for investigating said complaint*, it shall be the duty of the Commission to investigate the matters *complained of* IN SUCH MANNER AND BY SUCH MEANS AS IT SHALL DEEM PROPER. (Sec. 13.)

*When Commissioners Shall Not Dismiss Complaint.*

*No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.* (Sec. 13.)

*Form of Report of Commission.*

That whenever an investigation shall be made by said Commission, it shall be its duty to make

a report in writing in respect thereto, which shall include: (Sec. 14.)

(a) Findings of fact upon which the conclusions of the Commission are based. (Sec. 14.)

(b) Together with its recommendation as to what reparation, if any, should be made by the common carrier, to any party or parties who may be found to have been injured; (Sec. 14.)

(c) *And such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.* (Sec 14.)

*Recording Reports of Investigation.*

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of. (Sec. 14.)

*Decision of Commission and Proceedings Thereunder.*

That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, (1) *that anything has been done or*

*omitted to be done in violation of the provisions of this Act, or of any law cognizable by said Commission, by any common carrier, or (2) that any injury or damage has been sustained by the party or parties complaining, or (3) by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission :*

(a) To forthwith cause a copy of its report in respect thereto to be delivered to such common carrier. (Sec. 15.)

(b) Together with *a notice to said common carrier to cease and desist from such violation, OR to make reparation* for the injury so found to have been done, *or both*, within a reasonable time, to be specified by the Commission. (Sec. 15.)

(c) And if, within the time specified, it shall be made to appear to the Commission that such common carrier *has ceased from such violation of law, and has made reparation* for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law. (Sec. 15.)

*Failure of Common Carrier to Obey Judgment  
of Commission.*

First : That whenever any common carrier, as defined in and subject to the provisions of this Act, shall *violate or refuse or neglect to obey any lawful order or requirement* of the Commission in this Act named, it shall be the duty of the Commission, and *lawful for any company or person interested* in such order or requirement, to apply, in a SUMMARY WAY, by *petition*, to the Circuit Court of the United States sitting in equity in the judicial district in which the common carrier complained of has *its principal office*, or *in which the violation or disobedience of such order or requirement shall happen*, alleging such violation or disobedience, as the case may be. (Sec. 16.)

Second : The said court shall have power to *hear and determine the matter* :

(a) On such *short* notice to the common carrier complained of as the court shall deem reasonable ;

(b) And such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner as the court shall direct. (Sec. 16.)

(c) Said court shall proceed to hear and de-

terminate the matter *speedily* as a court of equity, and *without the formal pleadings and proceedings applicable to ordinary suits in equity*, but in such manner as to do justice in the premises ; and to this end such court shall have power, if it think fit :

(*d*) To direct and prosecute, in such mode and by such persons as it may appoint, all such enquiries as the court may think needful to enable it to form a just judgment in the matter of such petition ; and

(*e*) On *such hearing*, the report of said Commission shall be *prima facie* evidence of the matters therein stated. (Sec. 16.)

(*f*) And if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or *other proper process*, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same. (Sec. 16.)

(*g*) And in case of any *disobedience* of any

such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and, if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise. (Sec. 16.)

(*h*) And said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the ultimate decision of the court, or into the treasury; and payment thereof may, without

prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree *in personam* in such court. (Sec. 16.)

*Appeal.*

When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. (Sec. 16.)

*Petition to Circuit Court—by Whom Presented.*

First: Whenever any such petition shall be filed or presented by the Commission, it shall be the duty of the *District Attorney*, under the *direction* of the *Attorney-General* of the United States, to *prosecute* the same. (Sec. 16.)

Second: And the *costs* and expenses of such



prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. (Sec. 16.)

Third: For the purposes of this Act, excepting its penal provisions, the Circuit Courts of the United States shall be deemed to be always in session. (Sec. 16.)

*Comments upon the Sections Creating Inter-State Commerce Commission.*

An analysis of the sections, which we have given in this chapter, relating to the creation and powers of the Inter-State Commerce Commission, shows that Congress has attempted, under its general right to "*regulate* commerce," to form this Commission into a tribunal that is unique and extraordinary both in law and business. A study of the powers of this Commission shows that Congress has clothed it with more important and extensive judicial attributes than have ever been conferred upon any tribunal created under the laws of the Federal Government.

The Commission becomes, under the Act, not only a suitor or party, but it is a judge in its own causes.

It not only possesses all the powers of a petit

jury, but it has conferred upon it all the inquisitorial attributes of a grand jury.

First: The Commission has not only the power to investigate charges against railroads or common carriers made by any person, firm, corporation, or association, or body politic, or municipal organization, *whether* such person, firm, corporation, association, or manufacturing society, or body politic, or municipal organization *has any interest in the subject or not*; but it may investigate any complaint *forwarded* by a Railroad Commissioner or Railroad Commission of any State or territory.

The fundamental principle upon which courts act is, that no person can invoke their aid or use their processes unless he has some personal interest in the subject-matter involved. That principle is entirely set aside by this law, and the Commission is authorized to begin investigations at the instance of anybody who chooses to inaugurate them; and it is, moreover, enjoined to dismiss no complaint "because of the absence of direct damage to the complainant."

But more than this, the Commission has the power to set its own machinery in motion *ex mero motu*, and it is given the authority to institute any enquiry on its own motion, in the

same manner, and to the same effect as though complaint had been made. (Sec. 13.)

Second: The powers conferred upon the Commission, in respect to the *method* of investigating charges, are also extraordinary and singular.

If it shall appear to the Commission, that there is reasonable ground for investigation in any case, the Commission, under the 13th section of the Act, is not only authorized, but it is its duty to investigate “the matters complained of *in such manner and by such means as it shall deem proper.*”

Coupling this unlimited authority, with the power which is contained in the subsequent sections of the Act, allowing the Commission to enquire into the management and business of all common carriers; to obtain from such common carrier full and complete general information necessary to enable the Commission to perform the duties and carry out the business for which it was created, and to compel the attendance of witnesses and the production of books and papers before it without stint; the power of one or more Commissioners to prosecute any enquiry necessary to its duties in any part of the United States into any matter or

question of fact pertaining to the business of any common carrier subject to the provisions of the Act, together with its right to compel the companies to make annual reports;—considering all these things together,—it is impossible to conceive of any branch or element of the business of common carriers, that this Commission may not enquire into, interfere with, and supervise. The Commission is practically clothed with the powers of conducting and controlling the business of all the inter-State common carriers in the United States, and any statement short of this fails to convey an adequate idea of the authority which this extraordinary tribunal possesses.

Third: It is true that the Commission is not authorized by the Act to enforce its decisions, judgments, or decrees, but it has ample power, for that purpose, to invoke the aid of any Circuit Court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, and the Circuit Court is empowered to hear and determine the matter on such notice to the common carrier complained of as the court shall

deem reasonable, and such notice may be served upon the common carrier, his or its officers, agent, or servants in such manner as the court shall direct. (Sec. 16.)

If this legislation is valid, it creates a remarkable enlargement of the powers of the Circuit Court of the United States, because, under the 629th section of the Revised Statutes, which is not repealed by the Inter-State Commerce Act, it is provided that "no civil suit shall be brought before either of said courts, against any person, by any original process or proceeding in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving such process or commencing such proceeding." But if this Act is constitutional, power is conferred upon any Circuit Court to entertain a suit, of an original character, in equity, although the defendants are neither inhabitants of, nor found within the limits of the jurisdiction of said Circuit Court: and a Circuit Court, sitting in a district for New York, is empowered to bring within its jurisdiction a common carrier or person residing in Florida, or Dakota, or California, by having a notice served on such carrier personally, or by mail or otherwise, as the court may

direct. (Sec. 16.) Moreover, by the same section of the Revised Statutes of the United States, the jurisdiction of the Circuit Court is limited to cases where the matter in dispute exceeds the sum of five hundred dollars.

When we come to examine the method of proceeding in the Circuit Court, as provided for by Section 16, of this Act, it will be found still more anomalous, because the Circuit Court is directed to proceed to hear and determine the matter speedily as a court of equity, and without formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises. (Sec. 16.)

No provision is made for the defendant to answer the petition, but that right may be inferred, perhaps, from the general language of the section.

The Circuit Court is also given the power "if it think fit, to direct and prosecute in such mode, and by such persons as it may appoint, all such enquiries as the court may think needful to enable it to form a just judgment in the matter of such petition." (Sec. 16.)

Exactly what this language means is difficult to infer, and it is still more difficult to infer

what the powers would be of the persons appointed by the Circuit Court.

There is, however, a studious neglect in the law to set forth the steps or defences which the common carriers may interpose to the petition and judgment prayed for ; but, on the other hand, it is declared that in all judicial proceedings in the Circuit Court the findings of facts are to " be deemed *prima facie* evidence as to each and every fact found " by the Commission (Sec. 14), and on a hearing in the Circuit Court, provided for under Section 16, " the report of said commission shall be *prima facie* evidence of the matters therein stated."

The Act is also deficient in not providing for the power of adjournments, and the right to examine absent witnesses, or witnesses *de bene esse* ; but, without undertaking to specifically enumerate them, it is sufficient for the purposes of this work to state that many of the attributes of ordinary common-law actions, and suits in equity, are left to inference ; and if they are exercised by the Commissioners at all, must be regarded as conferred upon them by the general language of the Act.

There is no limit to the time within which proceedings may be begun against the common

carriers under this Act, and a complaint may be instituted whenever the Commission, or any person, or firm, or corporation, or body politic sees fit to formulate it, no matter what period of time may have intervened between the alleged infraction and the commencement of the proceedings.

Finally, it is difficult to decide whether the Circuit Court acts in the premises as a court of appeal, or whether the proceedings in that tribunal are to be regarded as begun *de novo*, and of an original character.

If the proceedings in the Circuit Court are regarded as of an appellate character, then the Act makes no provision whatever for an appeal on the part of the common carrier from the decrees, or judgments, or orders of the Commission, and the only method open to the common carrier of bringing the matter before the Circuit Court is to resist the acts of the Commission, to place itself in contempt, and thus force the Commission to invoke the aid of the Circuit Court. But suppose the Circuit Court does not agree with the conclusions, or judgments, or orders of the Commission, it has apparently no power to modify or alter such decree or order, and no power to formulate



a new judgment or decree—if the facts warrant it.

These, and many other practical difficulties, stand in the way of an enforcement of the law through the aid of the Circuit Court.

Fourth: It only remains to suggest the various constitutional propositions which arise from a consideration of the language and results and consequences of the Inter-State Commerce Act.

(a) The first and main question is: Has Congress the right to pass this law? Do the fixing of the rates, fares, and charges which common carriers may receive for the transportation of passengers or property, and the appointment of this Commission, with the powers conferred upon it, as contained in the Act, constitute a *regulation* of commerce? Does *regulation* mean *control* of commerce? Does it mean the absolute and unlimited power on the part of Congress to do any act with or concerning the commerce of the country that to it seems proper? Is there no limit placed upon the power of Congress in this respect? Is Congress the sole judge as to what facts constitute a regulation of commerce? Has Congress power to regulate any private commercial business conducted between two or

more States, in the manner in which it has attempted to legislate about common carriers? And does the fact that such carriers are *quasi* public officials create any distinction as against such carriers?

If it can be demonstrated to the Federal courts that the effect of the legislation in question is hurtful to the people of the country; that it is aimed at the subversion or destruction of commerce, can the Act be declared unconstitutional?

These are the interesting questions which surround this branch of the subject, and must be answered in order to sustain this piece of legislation. On the other hand, we have the utterances of the Supreme Court of the United States in the *Wabash Railway Company* case, and in the decisions there alluded to by Mr. Justice Miller, in which it is generally stated and held that Congress possesses the power to legislate upon the subject of inter-State commerce. There is nothing, however, in that opinion which upholds the right of Congress to delegate its power to a Commission, and this, as we have said in the beginning of this treatise, is an entirely new question for the courts to determine. (118 U. S., 557.)

(b) Assuming, however, that Congress may itself exercise powers similar to those created by the Inter-State Commerce Act, another grave question is, whether that body can delegate its powers to a tribunal such as is created by this Act. Has Congress the right to divest itself of the power which the Constitution has placed in its hands, and to entrust the regulation of commerce to a Commission? It will be seen that Congress, by this Act, does not undertake specifically to fix the rates or charges of common carriers, or to regulate the method or system by which they shall conduct their business. All of these things are practically left in the hands of the Commission, and it lies with that body, exclusively, to say what shall and what shall not constitute an infraction of the law.

Specific rules for the government of the business and conduct of carriers are not laid down by the Act, but it lies with the Commission to declare what the law shall be in any given case. The power of the Commission is arbitrary, unlimited, and unchecked; and while it cannot be assumed that it will be used detrimentally to the interests of the public, or of the common carriers, it is doubtful whether the

people of the United States, in adopting the Constitution, ever intended that such an unbounded supervision over the commercial interests of the country should ever be placed in the hands of a tribunal such as the Inter-State Commerce Commission.

An application of these suggestions to the various provisions of this Act, will be sufficient to show that Congress has practically delegated its whole power in the premises to the Commission.

While Congress has the right, under the Constitution of the United States, to "constitute tribunals inferior to the Supreme Court," the jurisdiction of those tribunals must be confined to such subjects and matters of jurisdiction as are specified in the Constitution. The people of the United States have defined the judicial power of the government, and under Section 2 of Article III. of the Constitution it is declared that :

"1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ; to all cases affecting ambassadors, or other public ministers and consuls ; to

all cases of admiralty and maritime jurisdiction ; to controversies to which the United States shall be a party ; to controversies between two or more States ; between a State and citizens of another State ; between citizens of different States ; between citizens of the same State, claiming lands under grants of different States ; and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

“ 2. In all cases affecting ambassadors, or other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.”

These suggestions are thrown out upon a possible contention that the Inter-State Commerce Commission is a judicial body, and within the authority of Congress to create under its power to establish inferior courts.

(c) The next proposition is whether some of the provisions of the Inter-State Commerce Act do not conflict with the Seventh Amendment to the Constitution of the United States, which provides that : “ In suits at common law,

where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.*"

It is undoubtedly true that many of the controversies arising between a shipper and a common carrier, which are to be decided by the Inter-State Commerce Commission, were, before the passage of that Act, the subject of common-law proceeding, and of investigation by a petit jury. For instance, actions against a common carrier for violation of contract, or for breach of duty, in the transportation of passengers or property, were, before the Inter-State Commerce Act, the subjects of common-law actions, in which juries were regularly empanelled. All of these matters are now cognizable by the Commission, at the instance, not only of persons who are actually aggrieved, but of any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, that chooses to take the initiative—whether aggrieved or not. (Sec. 13)

No provision is made in the Act for trial by jury in any case, and this right, instead of being preserved, as demanded by the Constitution, seems to be utterly destroyed and set at naught, by vesting jurisdiction in the Commission.

(d) Upon the question of costs the Act is entirely one-sided. By the eighth section the common carrier is made liable to the person injured for the full amount of damages sustained, "*together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs of the case.*" It is thus made the duty of the court to award an attorney's fee in every case in which damages are recovered, no matter how trivial the controversy may be. And there is no limit whatever to the amount which the court may grant. Each court is the sole judge of what is "reasonable," and there is no appeal from its decision.

On the other hand, there is no provision made for the payment of costs or attorney's fees to the common carrier in case it is successful. No matter how groundless the complaint; no matter how utterly devoid of merit the

action or suit may be, the common carrier is awarded no costs of any kind.

Whether this inequality infringes the Constitutional prerogatives of the common carriers is another of the questions which the courts must decide.

(e) The next question that will arise in considering the effect of the Inter-State Commerce Act is, whether it does not conflict with paragraph 5 of Section 9 of Article I. of the Constitution of the United States, which provides that : “No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.”

While the Act in question does not, in *express terms*, give any preference to the ports of one State over those of another, it would be sufficient, so far as the objects of this provision of the Constitution is concerned, if it could be demonstrated that the effect of the legislative measure would accomplish the result prohibited by the Constitution.

We do not intend to examine the question of fact raised by persons interested in this Act, whether its effect will be to create a preference in favor of some ports over those of others, but it is sufficient for our purposes to refer to the sec-



tion of the Constitution which may cover such an argument if it should be made.

(f) Finally, the question will arise whether the effect and consequence of the Inter-State Commerce Act is to violate the Fifth Amendment to the Constitution, which provides, *inter alia*, that no person shall "be deprived of life, liberty, or *property*, without due process of law, nor shall *private property be taken for public use without just compensation.*" \*

Without venturing into a detailed discussion upon these subjects, we have endeavored to impartially present the salient points which arise from a consideration of this important Act. It is the first attempt on the part of Congress to concentrate into the hands of a Commission powers that are at once judicial, commercial, and inquisitorial, and the decision of the Supreme Court of the United States upon this important subject will be awaited with the most intense anxiety and interest by the people of the United States.

\* See as to abrogation of contracts, ante pp. 27, 28.

## CHAPTER VIII.

### SALARY OF COMMISSIONERS, PRINCIPAL OFFICE AND REPORTS OF COMMISSION, AND MISCEL- LANEOUS PROVISIONS.

#### *Salary of Commissioners.*

EACH Commissioner shall receive an annual salary of \$7,500, payable in the same manner as the salaries of judges of the courts of the United States. (Sec. 18.)

#### *Secretary of Commission.*

The Commission shall appoint a secretary, who shall receive an annual salary of \$3,500, payable in like manner. (Sec. 18.)

#### *Other Employees.*

The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

*Offices of Commission.*

The Commission shall be furnished by the Secretary of the Interior with suitable offices and all necessary office supplies.

*Fees of Witnesses.*

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. (Sec. 18.)

*Expenses of Commission.*

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation in any other places than in the city of Washington, shall be allowed and paid, on the presentation of itemized vouchers therefor approved by the chairman of the Commission and the Secretary of the Interior. (Sec. 18.)

*Principal Office of Commission.*

The principal office of the Commission shall be in the city of Washington, where its gen-

eral sessions shall be held ; but whenever the convenience of the public or of the parties may be promoted, or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any enquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this Act. (Sec. 19.)

*Reports of Commission to Secretary of Interior.*

The Commission shall, on or before the first of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary. (Sec. 21.)

*Appropriations.*

That the sum of \$100,000 is hereby appropriated for the use and purposes of this Act for the fiscal year ending June 30, 1888, and the intervening time anterior thereto. (Sec. 23.)

*When Act Shall Take Effect.*

That the provisions of Sections 11 and 18 of this Act, relating to the appointment and organization of the Commission herein provided for, shall take effect immediately, and the remaining provisions of this Act shall take effect sixty days after its passage. (Sec. 24.)

The sixty days expire on the 5th day of April, 1887.



## APPENDIX.

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### AN ACT TO REGULATE COMMERCE.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of this act *shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country : Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the

receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid. •

The term "*railroad*" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "*transportation*" shall include all instrumentalities of *shipment or carriage*.

*All charges* made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, *shall be reasonable and just*; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Sec. 2. That if *any common carrier* subject to the provisions of this act *shall, directly or indirectly*, by any special rate, rebate, drawback, or other device, *charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered*, or to be rendered, *in the transportation* of passengers or property, subject to the provisions of this act, *than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions*, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.



Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and *shall not discriminate in their rates and charges between such connecting lines* ; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this act *to charge* or receive any greater compensation *in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions*, for a shorter than for a longer distance *over the same line*, in the same direction, the shorter being included within the longer distance ; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance : *Provided, however, That upon application* to the Commission appointed under the

provisions of this act, *such common carrier may, in special cases, after investigation by the Commission*, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property ; *and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.*

Sec. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof ; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offence.

Sec. 6. That every *common carrier* subject to the provisions of this act *shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this act.* The schedules printed as aforesaid by any such common carrier *shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges.* Such schedules shall be plainly

printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every depôt or station upon any such railroad, in such places and in such form that they can be conveniently inspected.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner *print* and keep for public inspection, at every depôt where such freight is received for shipment, schedules showing the *through rates* established and charged by such common carrier *to all points in the United States beyond* the foreign country to which it accepts freight for shipment ; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production ; and any law in conflict with this section is hereby repealed.

*No advance* shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect ; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. *Reductions* in such published rates, fares, or charges may

be made without previous public notice ; *but* whenever any such reduction is made, *notice of the same* shall immediately be publicly posted and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection.

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act *shall file with the Commission* hereinafter provided for copies of its *schedules of rates, fares, and charges* which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall *also file* with said Commission *copies of all contracts, agreements, or arrangements with other common carriers* in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates, or fares, or charges for such continuous lines or routes, *copies of such joint tariffs* shall also, in like man-

ner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable ; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published ; but no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares, or charges thus made and published.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated or wherein such offence may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section ; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act ; and failure to comply with its requirements shall be punishable as and for a contempt ; and the said Commissioners, as complainants, may also

apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

Sec. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination ; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

Sec. 8. That in case *any common carrier* subject to the provisions of this act *shall do*, cause to be done, or *permit to be done* any act, matter, or thing in this act prohibited or declared to be unlawful, or *shall omit to do any act, matter, or thing in this act required* to be done, such common carrier *shall be liable* to the person or persons

injured thereby for *the full amount of damages* sustained in consequence of any such violation of the provisions of this act, together *with a reasonable* counsel or *attorney's fee*, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

SEC. 9. That *any person* or persons *claiming to be damaged* by any common carrier subject to the provisions of this act *may either make complaint to the Commission* as hereinafter provided for, *or may bring suit in his or their own behalf* for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction ; but such person or persons *shall not have* the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit ; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

SEC. 10. That any common carrier subject to the provisions of this act, or, whenever such common carrier is a

corporation, *any director or officer* thereof, or any receiver, trustee, lessee, agent, *or person acting for* or employed by *such corporation*, who, alone or with any other corporation, company, person, or party, shall wilfully do or cause to be done, or *shall willingly* suffer or *permit* to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause *or willingly suffer* or *permit* any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, *or shall be guilty of any infraction* of this act, or shall aid or abet therein, shall be *deemed guilty of a misdemeanor*, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offence was committed, be subject to a *fine of not to exceed five thousand dollars* for EACH OFFENCE.

SEC. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner



may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States

within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Sec. 13. That *any person*, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization *complaining* of any thing done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. *If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable*

ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any State or Territory, at the request of such Commissioner or Commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

*No complaint* shall at any time be dismissed *because of* the absence of direct damage to the complainant.

Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured ; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Sec. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that any thing has been done or omitted to be done in violation

of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a *notice* to said common carrier to *cease and desist* from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission ; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon *be relieved from further liability or penalty for such particular violation of law.*

Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation

or disobedience, as the case may be ; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable ; and such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner as the court shall direct ; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises ; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition ; and on such hearing the report of said Commission shall be *prima facie* evidence of the matters therein stated ; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same ; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common

carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise ; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of *five hundred dollars for every day* after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the ultimate decision of the court, or into the Treasury ; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree *in personam* in such court. When the subject in dispute shall be of the value of *two thousand dollars* or more, either party to such proceeding before said court *may appeal* to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal ; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon ; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the

District Attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

Sec. 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper despatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations.

Sec. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the salaries of judges of the courts of the United States. The Commission shall ap-

point a Secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employes as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The Commission shall be furnished by the Secretary of the Interior with suitable offices and all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employes under their orders, in making any investigation in any other places than in the city of Washington, shall be allowed and paid, on the presentation of itemized vouchers therefor approved by the Chairman of the Commission and the Secretary of the Interior.

Sec. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but, whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

Sec. 20. That the Commission is hereby *authorized to*



*require annual reports* from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same ; the dividends paid, the surplus fund, if any, and the number of stockholders ; the funded and floating debts and the interest paid thereon ; the cost and value of the carrier's property, franchises, and equipment ; the number of employes and the salaries paid each class ; the amounts expended for improvements each year, how expended, and the character of such improvements ; the earnings and receipts from each branch of business and from all sources ; the operating and other expenses ; the balances of profit and loss ; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require ; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Sec. 21. That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

Sec. 22. That nothing in this act shall apply to the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employes, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employes; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act.

Sec. 23. That the sum of one hundred thousand dollars is hereby appropriated for the use and purposes of

this act for the fiscal year ending June thirtieth, anno Domini eighteen hundred and eighty-eight, and the intervening time anterior thereto.

Sec. 24. That the provisions of sections eleven and eighteen of this act, relating to the appointment and organization of the Commission herein provided for, shall take effect immediately, and the remaining provisions of this act shall take effect sixty days after its passage.

Approved, February 4, 1887.

No. 2473.

UNITED STATES OF AMERICA, DEPARTMENT  
OF STATE.

To all to whom these presents shall come, Greeting :

I certify that hereto annexed is a true copy of an Act of Congress, approved February 4, 1887, the original of which is on file in this Department, entitled : An Act to Regulate Commerce.

In testimony whereof, I, Thomas F. Bayard,  
Secretary of State of the United States,  
have hereunto subscribed my name  
and caused the seal of the Department  
of State to be affixed. Done at the  
City of Washington, this 8th day of  
March, A. D. 1887, and of the Inde-  
pendence of the United States of  
America, the one hundred and eleventh.

T. F. BAYARD.

{ Seal of }  
{ United States. }





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